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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

COLLEGE OF THE LAW, SAN
FRANCISCO a public trust and
institution of higher education
duly organized under the laws
and the Constitution of the
State of California;
FALLON VICTORIA, an
individual;
RENE DENIS, an individual;
TENDERLOIN MERCHANTS
AND PROPERTY
ASSOCIATION, a business
association;
RANDY HUGHES, an individual;
and
KRISTEN VILLALOBOS, an
individual,

Plaintiffs,

v.

CITY AND COUNTY OF SAN
FRANCISCO, a municipal
entity,

Defendant.

Case No. 4:20-cv-03033-JST

**PLAINTIFFS' RESPONSE TO
ADMINISTRATIVE MOTION**

*Filed concurrently with
DECLARATIONS*

**ASSIGNED FOR ALL PURPOSES
TO THE HONORABLE JON S.
TIGAR**

Trial Date: (None set yet)

1 **I. OVERVIEW**

2 Plaintiffs join defendant City and County of San Francisco's motion to relate
3 this case, *College of the Law, San Francisco (f/k/a/ Hastings College of the Law) et al.*
4 *v. County of San Francisco*, Case No. 4:20-cv-03033-JST (the "Tenderloin Case") and
5 *Coalition on Homelessness et al. v. City and County of San Francisco et al.*, Case No.
6 4:22-cv-05502-DMR (the "COH Case").

7 Relating the two cases in this Court, where the first case was filed, would
8 promote judicial efficiency and harmony and prevent forum shopping. It would also
9 be fair.

10 Both cases involve San Francisco's unhoused population, the epicenter of
11 which is in the Tenderloin.

12 Plaintiffs filed the Tenderloin Case first. (ECF no. 1.) Plaintiffs and City and
13 County of San Francisco ("City") reached a prompt settlement, embodied in the
14 Stipulated Injunction. (ECF no. 71.)

15 The COH and two other nonprofits (the "COH Intervenors") successfully
16 intervened in the Tenderloin Case, arguing they needed to protect the rights of the
17 unhoused population in the Tenderloin. (ECF no. 43.) This Court granted the COH
18 Intervenors' motion to intervene and explicitly gave them the right to seek to "modify
19 or improve upon" the Stipulated Injunction and to file a complaint in intervention.
20 (ECF. No. 69.)

21 Indeed, in July of 2020, the COH Intervenors filed a complaint and then an
22 amended complaint in this litigation. (ECF nos. 74, 80) They sought to ensure that
23 any remedy obtained in the Tenderloin Case "honors and safeguards the
24 constitutional and statutory rights of unhoused individuals living in the Tenderloin."
25 (ECF no. 80 at ¶ 12.) The relief sought by the COH Intervenors in this case included
26 a "declaratory judgment that the City must not violate unhoused persons' Eighth
27 Amendment rights by taking action that criminalizes their homeless status." (ECF
28 no. 80 at 40:1-2.)

Over the past three years, plaintiffs in the Tenderloin Case have regularly met-and-conferred with CCSF about the City's compliance with the Stipulated Injunction, especially the City's obligation to "make all reasonable efforts" to permanently reduce the number of tents and encampments to "zero." (Davis Declaration at ¶¶ 3-4.)

However, the COH has behaved differently. Rather than litigating the claims made in their complaint in intervention in this the Tenderloin Case, the COH filed a separate lawsuit against CCSF, the COH Case. The COH asked for the same relief in that case as it seeks in the complaint in intervention it filed this case.

Worse, plaintiffs in the Tenderloin Case have recently learned that the COH has been actively undermining compliance with the Stipulated Injunction, instead of exercising their right to seek to modify the Stipulated Injunction through proper judicial means.

II. PROCEDURAL HISTORY

"The Tenderloin's residents consist primarily of low-income and working class individuals, senior citizens, disabled people, and families with children." (ECF no. 01 at ¶ 26.) Nevertheless, for decades, policymakers, organizations and those with power have treated the Tenderloin as the City's "containment zone," where open-air-drug dealing and use was tolerated, and where unhoused people would be allowed to camp on the sidewalks. See Randy Shaw, "*SF's Drug Containment Zone*," BeyondChron, October 10, 2017 <https://beyondchron.org/sfs-drug-containment-zone/> ("A containment zone is a place where the city allows activities they want to keep out of other neighborhoods").

No other part of the City has been mistreated in a similar fashion for so many years. (*Id.*) Conditions in the Tenderloin became unbearable at the start of the COVID pandemic—many sidewalks literally became impassable—prompting plaintiffs to file the Tenderloin Case on May 4, 2020. (ECF no. 1.)

Plaintiffs and the City engaged in prompt settlement discussions. (ECF nos.

1 35-36, 41.) On June 5, this Court held a CMC and noted that settlement discussions
 2 in the Tenderloin Case were ongoing. (ECF no. 40.)

3 On June 9, 2020, the COH and two other nonprofit organizations (the “COH
 4 Intervenors”) moved to intervene in the Tenderloin Case, arguing that the “relief
 5 sought would directly affect unsheltered Tenderloin residents.... [T]hese residents
 6 have a constitutional right to be free from criminalization if they are residing outside
 7 with no available shelter options.” (ECF no. 43 at p. 2 [citing *Martin v. City of Boise*,
 8 920 F.3d 584, 616-17 (9th Cir. 2019)].)

9 Plaintiffs and the City reached a tentative settlement and on June 11, 2020,
 10 and jointly asked this Court to enter a Stipulated Injunction that reflected the terms
 11 of their agreement. (ECF 51.)

12 On June 16, 2020, this Court asked the COH Intervenors to file a
 13 supplemental brief, “stating what effect, if any, the parties’ settlement has on their
 14 motion to intervene.” (ECF no. 55.) Both plaintiffs and the City took no position on the
 15 COH’s request to intervene in this case. (ECF Nos. 63, 64.) While the motion to
 16 intervene was pending, CCSF and the COH Intervenors engaged in settlement
 17 discussions. (ECF Nos. 61, 62.)

18 On June 24, the COH Intervenors filed a brief that asked that the “Court
 19 require all parties to return to negotiation” so that the COH Intervenors may “modify
 20 the agreement” and “ensure that a settlement of this litigation is drafted and
 21 implemented in a way that better protects unhoused people’s rights.” (ECF No. 66 at
 22 2, 8).

23 On June 30, 2020, this Court granted the motion to intervene, but denied the
 24 COH Intervenors’ request to require order the parties to return to negotiations and
 25 modify the proposed Stipulated Injunction. This Court explained:

26 [The COH Intervenors] will be free to attempt to modify or
 27 improve upon the original parties’ settlement by
 28 negotiation or motion. And, as recent events make clear,
 there are yet additional parties whose interests are at
 stake in the Tenderloin and who are affected by “the

1 confluence of the COVID-19 emergency and the City's
 2 longstanding homelessness crisis." They too will wish to be
 3 heard. And with each proposed alteration to the original
 4 parties' agreement comes "the possibility that modification
 5 [will] 'unravel' the original settlement." (ECF no. 69 at 7
 6 [citations omitted].)

7 Also on June 30, this Court entered the Stipulated Injunction. (ECF no. 71).

8 The Stipulated Injunction mandates that the parties meet-and-confer if either
 9 side believes the other to be in breach. If the parties are unable to reach a resolution,
 10 then they must participate in a settlement conference before submitting the dispute
 11 to this Court. (*Id.* at Section VI.)

12 The COH Intervenors have never made an "attempt to modify or improve" the
 13 Stipulated Injunction. Instead, bypassing this Court, on September 27, 2022, the
 14 COH and others filed a separate action, the COH Case, and moved for a preliminary
 15 injunction.

16 In the meantime, in the three years since this Court entered the Stipulated
 17 Injunction, the Tenderloin Case plaintiffs initiated numerous efforts to meet-and-
 18 confer with the City about its compliance with the injunction. Most of those
 19 discussions have centered on plaintiffs' belief that City had breached its obligation
 20 under the Stipulated Injunction to "make all reasonable efforts" to permanently
 21 reduce the number of tents and encampments to "zero." Until recently, the parties
 22 were able to resolve the dispute without a settlement conference, let alone bringing
 23 the dispute to attention of this Court. (Davis decl. at ¶¶ 3-4.)

24 In the immediate months following the entry of the Stipulated Injunction,
 25 tremendous progress was made with respect to the sidewalk camps in the
 26 Tenderloin; on some days the number of tents and encampments dropped to the
 27 single digits. (Davis decl. at ¶ 5.)

28 However, in 2021, a backslide began; the number of tents and encampments
 slowly increased. Beginning late last year, the problem rapidly become much worse.
 Once again, some sidewalks became completely impassable. The plaintiffs in the

1 Tenderloin Case ramped up their meet-and-confer discussions with the City. By June
 2 2023, conditions on the sidewalks of the Tenderloin again became so bad that the
 3 plaintiffs carefully documented them in anticipation of having to present the dispute
 4 to this Court. (Davis decl. at ¶¶ 6, 7 and Declaration of Lidon Lilly.)

5 At about the same time, plaintiffs in the Tenderloin Case learned for the first
 6 time (during meet and confer discussions with the City) that the COH was allegedly
 7 instructing people camping on the Tenderloin's sidewalks to refuse the City's offers of
 8 shelter by citing to a preliminary injunction issued in the COH Case. The City
 9 reported that it felt that it could not comply with the Stipulated Injunction and was
 10 stuck between a rock and hard place. That is what prompted plaintiffs to request a
 11 formal settlement conference in this case. (Davis decl. at ¶9.)

12 Plaintiffs in the Tenderloin Case also recently learned that the COH, rather
 13 than seeking to modify the Stipulated Injunction through judicial means, has been
 14 engaged in other efforts to undermine compliance with the injunction. For example, a
 15 year after the Stipulated Injunction was entered the COH blatantly encouraged
 16 people to camp out on the neighborhood's sidewalks through its tent giveaway
 17 program. For example, the following post appeared on the COH's Twitter feed in
 18 December 2021:

19 ///

20 ///

21 ///



Source: <https://twitter.com/kattenburger/status/1707085556834869587/photo/1> (accessed on 10/7/2023 at 2:09 p.m.) (Davis decl. at ¶10-11.)

III. CONCLUSION

For the foregoing reasons, plaintiffs respectfully join the City's Administrative motion to relate the cases in this Court.

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1 Dated: October 6, 2023

WALKUP, MELODIA, KELLY & SCHOENBERGER

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3 By: /S/ Matthew D. Davis

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PROOF OF SERVICE

**Hastings v. City and County San Francisco
Case No. 4:20-cv-3033-JST**

At the time of service, I was over 18 years of age and not a party to this action. I am employed in the county where the mailing took place, My business address is 650 California Street, 26th Floor, City and County of San Francisco, CA 94108-2615.

On the date set forth below, I caused to be served true copies of the following document(s) described as

- **PLAINTIFFS' RESPONSE TO ADMINISTRATIVE MOTION**
- **DECLARATION OF LINDON LILLY IN SUPPORT OF PLAINTIFFS' MOTION TO ENFORCE STIPULATED INJUNCTION**
- **DECLARATION OF MATTHEW D. DAVIS IN SUPPORT OF PLAINTIFFS' RESPONSE TO ADMINIDTRATIVE MOTION OF DEFENDANT CCSF TO RELATE CASES**

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21 **BY CM/ECF NOTICE OF ELECTRONIC FILING:** I electronically filed the
22 document(s) with the Clerk of the Court by using the CM/ECF system. Participants
23 in the case who are registered CM/ECF users will be served by the CM/ECF system.
24 Participants in the case who are not registered CM/ECF users will be served by mail
25 or by other means permitted by the court rules.

26 I declare under penalty of perjury under the laws of the United States of
27 America that the foregoing is true and correct and that I am employed in the office of
28 a member of the bar of this Court at whose direction the service was made.

Executed on October 6, 2023, at San Francisco, California.



Kirsten Benzien